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CHARLES ELMORE CR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 325

STATE OF FLORIDA EX REL VIRGIL D. HAWKINS, ET AL.,

Petitioners,

vs.

BOARD OF CONTROL, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

ROBERT L. CARTER,
THURGOOD MARSHALL,
Counsel for Petitioners.

JACK GREENBERG,
HORACE HILL,
Of Counsel.

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgments of the Supreme Court of Florida, entered in the above-entitled cases on June 15, 1951.

Opinions Below

Opinions of the Supreme Court of Florida were entered on August 1, 1950, and on June 15, 1951. The August 1,

1950 and June 15, 1951 opinions in *State ex rel Hawkins* v. *Board of Control* are reported in 47 So. 2d 608, (R. 25) [1] and in 53 So. 2d 116, respectively (R. 40); in *State ex rel Boyd* v. *Board of Control,* 47 So. 2d 619, and 53 So. 2d 120, respectively; in *State ex rel Lewis* v. *Board of Control,* 47 So. 2d 617, and 53 So. 2d 119; in *State ex rel Finley* v. *Board of Control,* 47 So. 2d 620 and 53 So. 2d 119; in *State ex rel Maxey* v. *Board of Control,* in 47 So. 2d 618, and 53 So. 2d 119.

Jurisdiction

The Supreme Court of Florida on June 15, 1951, denied petitioners' motions for peremptory writs of mandamus and for further relief as provided in its orders of August 1, 1950 (R. 40). Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3). At each and every stage of these proceedings, in the motions for alternative writs of mandamus, in the alternative writs themselves, in the motions for peremptory writs of mandamus filed on January 19, 1950 (R. 24), and in the motions for peremptory writs of mandamus and for further relief filed on May 16, 1951 (R. 39), petitioners grounded their claims in the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Throughout these proceedings, petitioners have raised, relied upon and preserved the federal questions which are brought before this Court in this petition.

Questions Presented

1. Can the State refuse to admit petitioners to the University of Florida solely because of race and color for the

[1] All record citations are to the record in the *Hawkins* case since the printing of the other records was not completed at the time this petition was sent to the printers. The only difference in the cases are the names of petitioners.

pursuit of graduate education and training in law without violating petitioners' rights to the equal protection of the laws as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

2. On the basis of a resolution of the Board of Control ordering the establishment at the Florida A & M College for Negroes of the courses which petitioners seek to pursue and which provides for petitioners' admission to the University of Florida on a segregated basis in the event the courses desired are not available at Florida A & M College at the time petitioners seek to enroll therein, especially where the answers filed conclusively show that the courses ordered established at Florida A & M College were not in fact in actual operation, can the State of Florida avoid its constitutional obligation of immediately admitting petitioners to the University of Florida.

Statement

The cases of *State ex rel Hawkins, State ex rel Lewis, State ex rel Boyd, State ex rel Finley* and *State ex rel Maxey* v. *Board of Control* were brought in the court below as separate and independent causes. All five cases involve the same questions and were disposed of in the same manner in the court below. One petition covering all five cases, therefore, is being filed in this Court.

On April 4, 1949, petitioners made due and timely application for admission to the University of Florida, a public institution maintained and operated by the State for the higher education of its citizenry. Virgil Hawkins and William T. Lewis applied for admission to the School of Law; Rose Boyd for admission to the School of Pharmacy; Oliver Maxey for courses leading to a graduate degree in Chemical Engineering; and Benjamin Finley for courses leading to a graduate degree in agriculture. As of the time of their

respective applications, and as of now, petitioners were and are fully qualified in every legal respect for admission to the University of Florida. Moreover, they would have been admitted without question but for the fact that they are Negroes.

Their applications were referred to the Board of Control, respondents here, which governs and controls the entire university system of the State of Florida. On May 13, 1949, petitioners met with the Board of Control. At this meeting they were advised that the only state institution in Florida where the courses of study they desired could be pursued was at the University of Florida, but that in view of the laws of the state they could not be admitted to the University of Florida since it was maintained exclusively for white persons. The Board offered to pay petitioners' tuitions to institutions of their choice outside the state (R. 16-17).

Whereupon, petitioners instituted the instant action by filing petitions for alternative writs of mandamus in the Supreme Court of Florida (R. 1). These petitions were granted on June 10, 1949 (R. 4). Respondents' motions to quash were denied on December 8, 1949 (R. 9), and on January 7, 1950 the respondents filed their answers (R. 9).

Respondents admitted that petitioners were refused admission to the University of Florida solely because they are Negroes. It was admitted that at the time of petitioners' applications that the University of Florida was the only state institution offering courses in law, graduate agriculture, pharmacy and chemical engineering. The answers further alleged that authorization had been given by the Board of Control, in the form of a resolution dated December 21, 1949 for Florida A & M College for Negroes to provide the courses of study which petitioners sought to pursue (R. 21). The Board resolution recited that if the courses desired were not available at Florida A & M College,

when petitioners made application for admission thereto, and in the event the offer of out-of-state aid to petitioners should be held not to satisfy the state's constitutional obligations, petitioners would be admitted temporarily to the University of Florida on a segregated basis until such time as courses in question became available at Florida A & M College (R. 22).

On January 19, 1950, petitioners filed motions for peremptory writs of mandamus notwithstanding respondents' answers. The court held these petitions to be in the nature of demurrers in that they admitted the truth of respondents' allegations of fact. The court held that for the purpose of decision on petitioners' motions for peremptory writs of mandamus notwithstanding respondents' answers, the allegation by the Board of Control that as of December 21, 1949, it had ordered the establishment of Schools of Law, Pharmacy, Graduate Agriculture and Chemical Engineering at Florida A & M College and had ordered reactivation of the necessary effort to secure equipment and personnel and offered to temporarily admit petitioners to the University of Florida, on a segregated basis, until such time as these schools were actually in operation at the Negro College sufficiently satisfied the state's constitutional obligation to furnish equal educational opportunities (R. 32-38). The court refused, however, to enter a final order and retained jurisdiction of the cases in order to permit either petitioners or respondents to come before the court at some later date to seek whatever further relief might then be warranted (R. 38).

Petitioners reapplied to the University of Florida for the courses desired on August 7, 1950. On May 16, 1951, not having been admitted to or enrolled in any institution for the courses desired, petitioners filed motions for peremptory writs of mandamus and for further relief in accord-

ance with the court's opinion of August 1, 1950. On June 15, 1951, these motions were denied (R. 40). Whereupon, petitioners bring the causes here.

Specification of Error

1. The court erred in refusing to grant petitioners' motions for peremptory writs of mandamus filed on January 19, 1950 when respondents' answers clearly showed that courses petitioners desired were available only at the University of Florida.

2. The court erred in refusing to grant petitioners' original motions for peremptory writs of mandamus notwithstanding respondents' answers where the December 21, 1949, resolution, on which respondents rely, clearly showed that no courses in law, chemical engineering, graduate agriculture and pharmacy were actually available or in operation at Florida A & M College for Negroes.

3. The court erred in refusing to issue a decree ordering petitioners immediate admission to the University of Florida subject only to the same rules and regulations which are applicable to all other persons.

4. The court erred in refusing to grant petitioners' subsequent motions for peremptory writs of mandamus and for further relief filed in May 1951 in view of the fact that between the date of its opinion on August 1, 1950 and the date of the filing of petitioners' motions on May 16, 1951, petitioners had not been provided with educational opportunities of any nature while the courses they were qualified to pursue were being offered white students at the University of Florida.

Reasons for Allowance of the Writ

1. The December 21, 1949 resolution of the Board of Control, which the Florida Supreme Court held to afford

petitioners equal protection of the laws, reads in part as follows:

"... there is hereby established, at the Florida Agricultural and Mechanical College for Negroes, schools of law, mechanical engineering, agriculture at graduate level and pharmacy at graduate level; and qualifications for admission to said courses shall be the same as those required for admission to said courses at other State institutions of higher learning in the State of Florida; ...

"... efforts to acquire the necessary personnel, facilities, and equipment for such courses be reactivated and diligently prosecuted, with the view of installing said personnel, facilities, and equipment for such courses at the Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida, at the earliest date possible, thereby to more fully comply with the constitution and laws of the State of Florida; and that, in the meantime, and while diligent preparation is being made to physically set up said schools and courses at the "Florida Agricultural and Mechanical College for Negroes, at Tallahassee, Florida, further effort to be made to arrange with said applicants for out-of-state scholarships or other arrangements agreeable to them, equal to their reasonable individual needs and affording them full and complete opportunity to obtain the education for which they have applied, where obtainable, at institutions other than Florida state operated institutions of learning for white students, and under circumstances and surroundings fully as good as may be offered at any State operated institution of higher learning in the State of Florida; ...

"... in the event the court should hold that the foregoing provisions are insufficient to satisfy the lawful demands of said applicants, that temporarily, and only until completion of such acquisition of personnel, facilities and equipment for installation at the Florida Agricultural and Mechanical College for Negroes, at Tallahassee, comparable to those in institutions of higher learning of the State established for white students,

> the Florida Agricultural and Mechanical College for Negroes shall arrange for supplying said courses to its enrolled and qualified students at a Florida state operated institution of higher learning, where said courses may be given, and where the instructional personnel and facilities of such institution in the requested courses shall be provided and used for the education of said applicants at such times and places, and in such manner, as the latter institution may prescribe; and the authorities of such last described state operated institution of higher learning shall cooperate in making such arrangements, to the end that there shall be available to said students of the Agricultural and Mechanical College for Negroes, substantially equal opportunity for education in said courses as may be provided for white students under like circumstances. In providing such education, the authorities of both institutions shall at all times observe all requirements of the laws of the State of Florida in the matter of segregation of the races, etc . . ." (R. 22).

This resolution clearly shows that no courses in law, graduate agriculture, pharmacy or chemical engineering were actually being offered at Florida A & M College. Hence, no reliance whatsoever could possibly be placed by respondents on the state's segregation laws, even assuming, as did the court below, that the *Plessy* v. *Ferguson,* 163 U. S. 537, doctrine of "separate but equal" governed the disposition of petitioners' claims. Petitioners were unquestionably entitled to admission to the University of Florida, it being the only state institution actually offering the courses they desired to pursue. *Missouri ex rel Gaines* v. *Canada,* 305 U. S. 337; *Sipuel* v. *Board of Regents,* 332 U. S. 631. The decision of the court below that the resolution of December 21, 1949 afforded petitioners equal protection of the laws is in further direct conflict with the

Sipuel case where this Court held that Negro applicants must be furnished educational opportunities as soon as such facilities are made available to white persons.

2. The practice of any form of segregation based on race and color at the professional and graduate school level of state universities violates the equal protection clause of the Fourteenth Amendment, *Sweatt* v. *Painter*, 339 U. S. 629; *McLaurin* v. *Board of Regents*, 339 U. S. 637; *Wilson* v. *Board of Supervisors*, 94 L. Ed. (Adv. Op.) 200; *McKissick* v. *Carmichael*, 187 F. 2d 949 (CCA 4th 1951), cert. den. — U. S. —, June 4, 1951. Thus the approval by the court below of the December 21, 1949 resolution, which at best would permit petitioners' temporary admission to the University of Florida on a segregated basis, is in direct conflict with these cited cases.

It should be pointed out that in the *Sweatt* case, where the segregated Negro law school was held not to afford petitioner equal educational opportunities, that the law school had been in operation for several years; that in the *Wilson* case a Negro law school had been functioning at Southern University in Louisiana for at least five years; and that in the *McKissick* case the law school at the North Carolina College for Negroes had been in continuous operation since 1939. Yet all three schools were found inferior to the law school operated at the main State university. Here, on the other hand, there wasn't even a semblance of a law school or graduate school but merely a directive to reactivate and diligently prosecute efforts to procure necessary equipment, personnel and facilities to get the desired courses of study functioning.

3. The decision of the court below that petitioners must first apply to Florida A & M College for Negroes, and the courses they desire not be there available, before being

entitled to admission to the University of Florida is in direct conflict with the decisions of this Court in *Missouri ex rel Gaines* v. *Canada, supra; Sweatt* v. *Painter, supra.* It is admitted that petitioners had made due and timely application to the University of Florida. They were wrongfully and illegally refused admission, whereas white persons were accepted. Having proved their qualifications and the respondents' wrongful denial of their applications, petitioners were entitled to an affirmative and unconditional decree ordering respondents to immediately admit them to the University of Florida subject only to the same rules and regulations applicable to all other persons.

4. The denial by the court below of petitioners' motions for peremptory writs of mandamus and for further relief filed on May 16, 1951 in which it was recited that respondents had failed to provide petitioners with equal educational opportunities was contrary to decisions of this Court in which the question of equal educational opportunities has been decided, *Sipuel* v. *Board of Regents, supra; Sweatt* v. *Painter, supra.* The state has failed in its obligation to furnish petitioners equal educational opportunities, and petitioners were entitled to issuance of peremptory writs of mandamus ordering their admission to the University of Florida.

Conclusion

Since the decisions of the court below in these cases are directly contrary to the decisions of this Court, as set forth *supra,* it is respectfully submitted that this petition for writ of certiorari should be granted and the causes reversed and remanded without hearing, with instructions to the court below that it issue a decree ordering that petitioners be admitted to the University of Florida, forthwith, subject

only to the same rules and regulations applicable to all other students.

THURGOOD MARSHALL,
ROBERT L. CARTER,
Counsel for Petitioners.

JACK GREENBERG,
HORACE HILL,
Of Counsel.

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